

AMENDED IN ASSEMBLY APRIL 24, 2000

AMENDED IN ASSEMBLY APRIL 3, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2107

Introduced by Assembly Member Scott

February 22, 2000

An act to add Section 6177 to the Business and Professions Code, to amend Section 785 of, and to add Sections 789.8 and 789.9 to, the Insurance Code, ~~to amend Section 368 of the Penal Code,~~ and to amend Section 15610.30 of the Welfare and Institutions Code, relating to elder abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 2107, as amended, Scott. Elder abuse.

(1) Existing law permits a lawyer to sell financial products to a client who is an elder or dependent adult with whom the lawyer has or has had, within the preceding 3 years, an attorney-client relationship, if the transaction is fair and reasonable to the client and the lawyer provides the client with a specified disclosure.

This bill would prohibit a lawyer from selling an annuity, as defined, to an elder with whom the lawyer has or has had an attorney-client relationship.

(2) Existing law imposes on all insurers, brokers, agents, and others engaged in the transaction of insurance with a prospective insured who is age 65 years or older, a duty of

honesty, good faith, and fair dealing, and exempts specified kinds of insurance policies from these obligations.

This bill would repeal the exemptions, and would require in the sale of financial products to elders for long-term care planning that specified disclosures be made. The bill would only permit a licensed life agent who has a National Association of Securities Dealers Series 7 license and who is either a certified financial planner or certified financial analyst to advise *about and sell to* an elder or his or her agent ~~to purchase financial products for~~ long-term care planning with the proceeds from the sale of assets. The bill would only permit those life agents to sell or offer for sale to an elder or his or her agent any financial product on the basis of the product's treatment under Medi-Cal *after making specified disclosures*. The bill would also provide that an elder applicant for any annuity has a right to rescind the application for 30 days, as specified.

~~(3) Existing law makes it a crime to violate specified penal provisions proscribing theft or embezzlement relating to the property of elders and dependent adults, and makes it a felony when the money, labor, or real or personal property taken is of a value exceeding \$400.~~

~~This bill would make it a felony if that value exceeded \$100, thereby expanding the definition of a crime and imposing a state-mandated local program. Existing law prohibits conflicts of interest between an attorney and client.~~

~~This bill would prohibit a financial services agent, as specified, from entering into a compensated referral arrangement with a lawyer who offers legal services to that agent's client or agent.~~

~~(4) Existing law defines financial abuse for the purpose of reporting and investigating elder and dependent adult abuse.~~

~~This bill would revise that definition.~~

~~(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~
no. State-mandated local program: ~~yes~~ no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6177 is added to the Business and
2 Professions Code, to read:

3 6177. (a) For purposes of this section, “annuity”
4 means those annuity contracts, including period-certain
5 annuities issued by a life insurer, that require for their
6 lawful issuance a certificate of authority from the
7 Insurance Commissioner.

8 (b) Notwithstanding Section 6175.3, a lawyer may not
9 sell an annuity to an elder with whom the lawyer has or
10 has had an attorney-client relationship. *Nothing in this*
11 *subdivision shall be construed to prohibit a lawyer from*
12 *providing to an elder with whom the lawyer has or has*
13 *had an attorney-client relationship advice with regard to*
14 *the purchase or sale of an annuity.*

15 SEC. 2. Section 785 of the Insurance Code is amended
16 to read:

17 785. (a) All insurers, brokers, agents, and others
18 engaged in the transaction of insurance owe a
19 prospective insured who is age 65 years or older, a duty
20 of honesty, good faith, and fair dealing. This duty is in
21 addition to any other duty, whether express or implied,
22 that may exist.

23 (b) Conduct of an insurer, broker, or agent, or other
24 person engaged in the transaction of insurance, during
25 the offer and sale of a policy or certificate previous to the
26 purchase is relevant to any action alleging a breach of the
27 duty of good faith and fair dealing.

28 SEC. 3. Section 789.8 is added to the Insurance Code,
29 to read:

30 789.8. (a) Only a licensed life agent who has a
31 National Association of Securities Dealers Series 7 license
32 and who is a certified financial planner or certified
33 financial analyst may advise *about and sell to* an elder, or
34 the elder’s agent, ~~to purchase~~ financial products for
35 long-term care planning with the proceeds from the sale

1 of any stock, bond, IRA, certificate of deposit, mutual
2 fund, annuity, or other asset.

3 (b) “Elder” for purposes of this section means any
4 person residing in this state, 65 years of age or older.

5 (c) The life agent shall advise an elder or elder’s agent
6 orally and in writing that the sale of any stock, bond, IRA,
7 certificate of deposit, mutual fund, annuity, or other asset
8 may have tax consequences, early withdrawal penalties,
9 or other costs or penalties as a result of the liquidation,
10 and that the elder or elder’s agent may wish to consult
11 independent legal or financial advice before liquidating
12 any assets.

13 (d) The life agent may not misrepresent the treatment
14 of any asset under the statutes and rules and regulations
15 of the Medi-Cal program, as it pertains to the
16 determination of eligibility for any program of public
17 assistance.

18 (e) The life agent may not offer for sale or sell any
19 financial product on the basis of the product’s treatment
20 under the Medi-Cal program without first fully disclosing
21 to the elder or the elder’s agent the treatment under the
22 statutes and rules and regulations of the Medi-Cal
23 program in effect at the time of the sale of any assets used
24 to purchase, or any assets liquidated in order to purchase,
25 the financial product. The disclosure shall include, but is
26 not limited to, the treatment of the home, community
27 spouse resource allowance, community minimum
28 monthly maintenance need allowance, pensions, and
29 IRAs. The disclosure shall also include whether income,
30 if any, generated by the financial product will affect the
31 share of cost for Medi-Cal, and whether, after the elder’s
32 death, the remainder interest, if any, will be subject to
33 estate recovery under the rules and regulations and
34 statutes in effect at the time of the sale.

35 (f) An elder applicant for an annuity has the right to
36 rescind the application within 30 days of receipt of the
37 policy or receipt of all the disclosures required by this
38 section, whichever occurs later. Upon rescinding the
39 application, the elder shall be refunded any premiums
40 paid with no proration and no deduction for sales charges.

1 For a sale of an annuity to an elder, the notice of the right
2 to rescind shall be affixed to the policy and the applicant
3 shall also be provided a separate disclosure of the right to
4 rescind. The application shall be void unless the applicant
5 has acknowledged on the application receipt of the
6 separate disclosure.

7 SEC. 4. Section 789.9 is added to the Insurance Code,
8 to read:

9 789.9. A financial services agent, including, but not
10 limited to, an insurance agent or broker, mortgage
11 broker, real estate broker, or securities broker, may not
12 enter into a compensated referral arrangement with any
13 lawyer who offers legal services to that agent's client or
14 agent.

15 ~~SEC. 5. Section 368 of the Penal Code is amended to~~
16 ~~read:~~

17 ~~368. (a) The Legislature finds and declares that~~
18 ~~crimes against elders and dependent adults are deserving~~
19 ~~of special consideration and protection, not unlike the~~
20 ~~special protections provided for minor children, because~~
21 ~~elders and dependent adults may be confused, on various~~
22 ~~medications, mentally or physically impaired, or~~
23 ~~incompetent, and therefore less able to protect~~
24 ~~themselves, to understand or report criminal conduct, or~~
25 ~~to testify in court proceedings on their own behalf.~~

26 ~~(b) (1) Any person who, under circumstances or~~
27 ~~conditions likely to produce great bodily harm or death,~~
28 ~~willfully causes or permits any elder or dependent adult,~~
29 ~~with knowledge that he or she is an elder or a dependent~~
30 ~~adult, to suffer, or inflicts thereon unjustifiable physical~~
31 ~~pain or mental suffering, or having the care or custody of~~
32 ~~any elder or dependent adult, willfully causes or permits~~
33 ~~the person or health of the elder or dependent adult to be~~
34 ~~injured, or willfully causes or permits the elder or~~
35 ~~dependent adult to be placed in a situation in which his~~
36 ~~or her person or health is endangered, is punishable by~~
37 ~~imprisonment in a county jail not exceeding one year, or~~
38 ~~in the state prison for two, three, or four years.~~

39 ~~(2) If in the commission of an offense described in~~
40 ~~paragraph (1), the victim suffers great bodily injury, as~~

~~1 defined in subdivision (c) of Section 12022.7, the~~
~~2 defendant shall receive an additional term in the state~~
~~3 prison as follows:~~

~~4 (A) Three years if the victim is under 70 years of age.~~

~~5 (B) Five years if the victim is 70 years of age or older.~~

~~6 (3) If in the commission of an offense described in~~
~~7 paragraph (1), the defendant proximately causes the~~
~~8 death of the victim, the defendant shall receive an~~
~~9 additional term in the state prison as follows:~~

~~10 (A) Five years if the victim is under 70 years of age.~~

~~11 (B) Seven years if the victim is 70 years of age or older.~~

~~12 (c) Any person who, under circumstances or~~
~~13 conditions other than those likely to produce great bodily~~
~~14 harm or death, willfully causes or permits any elder or~~
~~15 dependent adult, with knowledge that he or she is an~~
~~16 elder or a dependent adult, to suffer, or inflicts thereon~~
~~17 unjustifiable physical pain or mental suffering, or having~~
~~18 the care or custody of any elder or dependent adult,~~
~~19 willfully causes or permits the person or health of the~~
~~20 elder or dependent adult to be injured or willfully causes~~
~~21 or permits the elder or dependent adult to be placed in~~
~~22 a situation in which his or her person or health may be~~
~~23 endangered, is guilty of a misdemeanor.~~

~~24 (d) Any person who is not a caretaker who violates any~~
~~25 provision of law proscribing theft or embezzlement, with~~
~~26 respect to the property of an elder or dependent adult,~~
~~27 and who knows or reasonably should know that the victim~~
~~28 is an elder or dependent adult, is punishable by~~
~~29 imprisonment in a county jail not exceeding one year, or~~
~~30 in the state prison for two, three, or four years, when the~~
~~31 money, labor, or real or personal property taken is of a~~
~~32 value exceeding one hundred dollars (\$100); and by a fine~~
~~33 not exceeding one thousand dollars (\$1,000), by~~
~~34 imprisonment in a county jail not exceeding one year, or~~
~~35 by both that fine and imprisonment, when the money,~~
~~36 labor, or real or personal property taken is of a value not~~
~~37 exceeding one hundred dollars (\$100).~~

~~38 (e) Any caretaker of an elder or a dependent adult~~
~~39 who violates any provision of law proscribing theft or~~
~~40 embezzlement, with respect to the property of that elder~~

~~1 or dependent adult, is punishable by imprisonment in a
2 county jail not exceeding one year, or in the state prison
3 for two, three, or four years when the money, labor, or
4 real or personal property taken is of a value exceeding
5 one hundred dollars (\$100), and by a fine not exceeding
6 one thousand dollars (\$1,000), by imprisonment in a
7 county jail not exceeding one year, or by both that fine
8 and imprisonment, when the money, labor, or real or
9 personal property taken is of a value not exceeding one
10 hundred dollars (\$100).~~

~~11 (f) Any person who commits the false imprisonment
12 of an elder or dependent adult by the use of violence,
13 menace, fraud, or deceit is punishable by imprisonment
14 in the state prison for two, three, or four years.~~

~~15 (g) As used in this section, "elder" means any person
16 who is 65 years of age or older.~~

~~17 (h) As used in this section, "dependent adult" means
18 any person who is between the ages of 18 and 64, who has
19 physical or mental limitations which restrict his or her
20 ability to carry out normal activities or to protect his or
21 her rights, including, but not limited to, persons who have
22 physical or developmental disabilities or whose physical
23 or mental abilities have diminished because of age.
24 "Dependent adult" includes any person between the
25 ages of 18 and 64 who is admitted as an inpatient to a
26 24-hour health facility, as defined in Sections 1250, 1250.2,
27 and 1250.3 of the Health and Safety Code.~~

~~28 (i) As used in this section, "caretaker" means any
29 person who has the care, custody, or control of, or who
30 stands in a position of trust with, an elder or a dependent
31 adult.~~

~~32 (j) Nothing in this section shall preclude prosecution
33 under both this section and Section 187 or 12022.7 or any
34 other provision of law. However, a person shall not
35 receive an additional term of imprisonment under both
36 paragraphs (2) and (3) of subdivision (b) for any single
37 offense, nor shall a person receive an additional term of
38 imprisonment under both Section 12022.7 and paragraph
39 (2) or (3) of subdivision (b) for any single offense.~~

~~40 SEC. 6.~~

1 SEC. 5. Section 15610.30 of the Welfare and
2 Institutions Code is amended to read:

3 15610.30. (a) “Financial abuse” of an elder or
4 dependent adult occurs when a person or entity does any
5 of the following:

6 (1) Takes, secretes, or appropriates real or personal
7 property of an elder or dependent adult to a wrongful use
8 or with intent to defraud, or both.

9 (2) Assists in taking, secreting, or appropriating real or
10 personal property of an elder or dependent adult to a
11 wrongful use or with intent to defraud, or both.

12 (3) Continues to hold the real or personal property of
13 an elder or dependent adult, or fails to take reasonable
14 steps to make the real or personal property readily
15 available to the elder or dependent adult, to his or her
16 representative, or to a court appointed receiver, under
17 the following conditions:

18 (A) The person or entity has possession of or control of
19 or access to the real or personal property that belongs to,
20 or is held in express trust, constructive trust, or resulting
21 trust for, the elder or dependent adult.

22 (B) The elder or dependent adult or his or her
23 representative requests the person or entity to transfer
24 the real or personal property to the elder or dependent
25 adult, or to his or her representative, or to a court
26 appointed receiver.

27 (C) The person or entity takes, secretes, or
28 appropriates the real or personal property to a wrongful
29 use or with intent to defraud.

30 (b) For purposes of this section, “representative”
31 means a person or entity that is either of the following:

32 (1) A conservator, trustee, or other representative of
33 the estate of an elder or dependent adult.

34 (2) An attorney-in-fact of an elder or dependent adult
35 who acts within the authority of the power of attorney.

36 ~~SEC. 7. No reimbursement is required by this act~~
37 ~~pursuant to Section 6 of Article XIII B of the California~~
38 ~~Constitution because the only costs that may be incurred~~
39 ~~by a local agency or school district will be incurred~~
40 ~~because this act creates a new crime or infraction;~~

1 ~~eliminates a crime or infraction, or changes the penalty~~
2 ~~for a crime or infraction, within the meaning of Section~~
3 ~~17556 of the Government Code, or changes the definition~~
4 ~~of a crime within the meaning of Section 6 of Article~~
5 ~~XIII B of the California Constitution.~~

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